

MM97-182

August 29, 1997

DOCKET FILE COPY ORIGINAL

Kenneth S. Fellman, Esq.  
Kissinger & Fellman, P.C.  
Ptarmigan Place, Suite 900  
3773 Cherry Creek North Drive  
Denver, Colorado 80209

RECEIVED

OCT 16 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Mr. Fellman:

Re: NAB/MSTV Petition for Rule Making Concerning FCC Preemption of Certain State/Local Government Restrictions on the Placement, Construction and Modification of Broadcast Transmission Facilities

Dear Mr. Fellman:

We at the National Association of Broadcasters and the Association for Maximum Service Television, Inc. ("MSTV") are in receipt of your letter of August 1, 1997, to Barry D. Umansky, NAB's Deputy General Counsel. Your letter invites NAB and other broadcast representatives to participate in the September 26, 1997, plenary meeting of the FCC's "Local and State Government Advisory Committee." Additionally, your letter attached the Advisory Committee's *Advisory Committee Recommendation Number 3*.

Your letter and the *Advisory Committee Recommendation Number 3* refer to the above-referenced petition, which was filed jointly by NAB and MSTV on May 30, 1997. The NAB/MSTV petition urged the Commission to begin a rulemaking proceeding to seek public comment on the adoption of FCC rules that would preempt certain state and local regulations which impede the ability of broadcasters to alter or construct broadcast transmission facilities. Though filed in the initial context of the mandatory and aggressive FCC "build-out" schedule for conversion of all United States television stations to digital broadcasting, the NAB/MSTV petition recommended that the requested preemption rules apply to *all* broadcast facilities – television and radio.

In discussions NAB had with Commission staff prior to the filing of our petition, it was requested that NAB apprise you of the filing of the petition when we submitted it to the Commission. We complied with that request. In your August 1, 1997, letter you ask for us to make a presentation to the September 26, 1997, meeting of your Advisory Committee. You ask that we use that appearance to describe our petition and discuss several of its components.

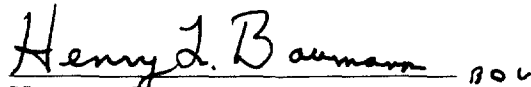
However, members of your Advisory Committee already have apparently examined the NAB/MSTV petition, as is evident from a reading of *Advisory Committee Recommendation Number 3*, issued July 25, 1997, which opposed it. Indeed, it appears likely that your Advisory Committee now is reviewing the text of the FCC's new *Notice of Proposed Rule Making* in MM Docket No. 97-182, released August 19, 1997, which was issued in response to the NAB/MSTV petition.

In filing our petition, it was – and is – the position of NAB and MSTV that the matter of state/local impediments to new and modified broadcast transmission facilities must be addressed promptly by the full Commission through rule making. Adoption of effective preemption rules is, of course, the responsibility of the FCC and cannot be delegated to your Advisory Committee. As a result, we oppose any effort to delegate these important, all-industry and “time-is-of-the-essence” issues to the workings of your Advisory Committee, as you apparently desire.

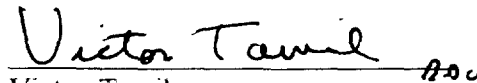
Because the Commission has now instituted a rule making, it hardly seems necessary for NAB or MSTV to explain to your Advisory Committee the nature of our petition. However, it is our intention to send a representative to your meetings to listen to your deliberations and provide information to the Committee when appropriate. Based on the discussions that you will have in your upcoming Advisory Committee meetings, we will determine whether to offer a formal presentation to your group.

Again, we must emphasize our strongest support for the prompt adoption of effective FCC preemption rules of general applicability. Your Advisory Committee continues to have the opportunity to submit its views into the record of the preemption rule making proceeding and we look forward to reviewing your comments.

Sincerely yours,

 *no*

Henry L. Baumann  
Executive Vice President & General Counsel  
NATIONAL ASSOCIATION OF  
BROADCASTERS  
1771 N Street, N.W.  
Washington, DC 20036

 *no*

Victor Tawil  
Senior Vice President  
ASSOCIATION FOR MAXIMUM SERVICE  
TELEVISION  
1776 Massachusetts Avenue, N.W., Suite 310  
Washington, DC 20036

cc: Chairman Reed Hundt  
Commissioner James Quello  
Commissioner Susan Ness  
Commissioner Rachelle Chong  
William E. Kennard, Esq.  
Roy J. Stewart, Esq.

Keith Larson  
Susan Fox, Esq.  
Rosalind Allen, Esq.  
Sheryl Wilkerson, Esq.  
Mark Prak, Esq.

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I am a licensed Amateur Radio Operator. Can Amateur Radio be included in the proposed rule on Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities (MM Docket No. 97-182, FCC 97-296)?

It seems a shame we have to continuously fight battles with municipalities to enjoy our hobby...one which still contributes heavily in disasters or just plain helps with communications during events. Hams give their time and efforts to help others.

Please include amateur radio towers in your proposed rule making or develop a rule just for amateur radio.

Thank You,

Michael C. Fulcher

KC7V

6545 E. Montgomery Road

Cave Creek, AZ 85331

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

<center>=====

Mike Fulcher KC7V

kc7v@earthlink.net

One of the "VooDudes"

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U.S. DEPT. OF JUSTICE

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13 Teton Road  
Sumter, SC 29154  
September 24, 1997

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Federal Communications Commission  
Office of the General Counsel  
191 M Street NW  
Washington, DC 20554

Gentlemen:

There is a move afoot to allow tall radio and TV towers to be built over the objection of State and local governments. This is ostensibly to assist them with high definition TV transmission. I am opposed to allowing "for profit" entities to circumvent local control. Specifically, we presently have a 1200 foot tower in proximity to our county airport. With the common hazy conditions it can be difficult to see. Should more of these tall towers spring up, avoiding them becomes increasingly difficult. Air safety is compromised. Our airport is an economic asset and if its' usefulness is diminished then attracting industry is made more difficult.

I recognize that there is a public interest both the airport and radio and TV programing. The best entity to balance the public interest between the profit oriented media and the airport users is local government who can decide each tower siting on its merits. Local zoning is the best vehicle to accomplish that.

Please do not allow the proposal to remove local control of tower sitings to take place.

Very truly yours,

  
Ralph E. Baker

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OCT 16 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**From:** "GEORGE TINKHAM" <DOTWGTL@CMSWANG.STATE.IL.US>  
**To:** A4.A4 (JBOLEY)  
**Date:** 9/30/97 9:02am  
**Subject:** Addressing InterNet Email

30 September 1997

Judy Boley  
Federal Communications Commission  
Room 234 1919 M Street, N.W.  
Washington, D.C. 20544  
jboley@fcc.gov

Dear Ms Boley:

I am reviewing FCCs Notice of Proposed Rulemaking in MM Docket No. 97-182 which pertains to siting of broadcast station transmission facilities. Are you involved in this matter?

If not, would you please furnish the name, phone #, and address (e-mail & regular mail) of the person who is involved? If you are involved, would you please advise me of the Federal Register in which this Notice was published?

My major concern with this proposed rulemaking is that the FCC may permit towers to be placed so close to airports that air transportation safety would be compromised. One way of protecting the public from such obstructions would be for trained professionals to evaluate the safety aspects of proposed tower sites. I doubt if the FCC is interested in hiring and maintaining a staff to handle this function. The State of Illinois, however, already has an experienced staff of such individuals. It would be unfortunate if this State's ability to protect air travelers and persons on the ground was preempted by the FCC in the matter of tower placement.

Please get back to me as quickly as you can. I understand the comment period ends on October 30th.

Sincerely,  
George W. Tinkham  
Asst. Chief Counsel  
IL Dept. of Transportation  
Div. of Aeronautics  
One Langhorne Bond Drive  
Capital Airport  
Springfield, IL 62707  
(217) 785-4281

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**CITY OF ORMOND BEACH  
FLORIDA**



OFFICE OF CITY ATTORNEY

*The Birthplace of Speed* ®

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OCT 16 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

September 26, 1997

Honorable Chairman Hundt and Commissioners  
Federal Communications Commission  
Room 814  
1919 M Street, NW  
Washington, DC 20554

Re: Proposed Rulemakings - Broadcast/Cellular Towers

Dear Chairman Hundt and Commissioners:

Our City recently became aware of the referenced proposed rulemakings, and our City Commission has directed that our office convey to you its concerns over these rulemakings.

*Broadcast Towers*

With respect to these towers, it is our understanding that this proposed rulemaking will require municipalities to act on all zoning, building permit and other requests for radio and television station towers within 21 to 45 days, *irrespective* of local requirements for notice to adjoining landowners, public hearing requirements, appeal periods, and the like. We further understand that failure to act within this time frame will result in the zoning or other application being automatically granted and that denials may only be for clearly stated safety reasons.

Our concerns over this rulemaking are as follows:

- with some of the new digital towers being nearly one-half (1/2) mile tall (taller than either the Sears Tower or the Empire State Building), they have the potential for tremendous impacts on adjoining land uses;

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10/16/97

- the proposed time frame for permitting is totally unrealistic and bears no relation to the procedural requirements of state and local law, the requirements of due process, or land use law;
- the proposed rulemaking totally disregards property values, historic districts, aesthetics and the like; apparently even safety rules may be overruled by nonsafety federal interests; and
- the proposed rulemaking appears to violate principles of federalism which recognize zoning as being a uniquely local concern.

#### *Cellular Towers*

With respect to these towers, it is our understanding that this proposed rulemaking would allow the Commission to review and reverse *any* local zoning decision which the Commission concludes is "tainted" by citizen concerns over radio wave radiation. On a related matter, we understand the Commission is proposing to prohibit municipalities from requiring cellular telephone companies, as a condition of zoning approval, from conducting measurements to show that radiation from their towers complies with Commission standards.

Our concerns over these rulemakings are as follows:

- it appears that the Commission is using the "radiation exception" to overturn the 1996 Telecommunications Act's preservation of local zoning authority over cellular towers because, in contested cases, some citizen will usually mention concern over radio wave radiation;
- the proposed rulemaking violates principles of federalism, especially by allowing the Commission to "second-guess" the basis for local decisions and to reverse decisions which are otherwise acceptable;
- the proposed rulemaking violates the 1996 Act's *preservation* of local authority over cellular tower radiation which *exceeds* FCC limits; and
- the proposed rulemaking infringes on citizens' freedom of speech and right to petition government, since citizens who *properly* raise radiation concerns (*i.e.*, exceeding FCC limits) may actually *increase* the chances that cellular towers will be located near them.

Honorable Chairman Hundt and Commissioners

September 26, 1997

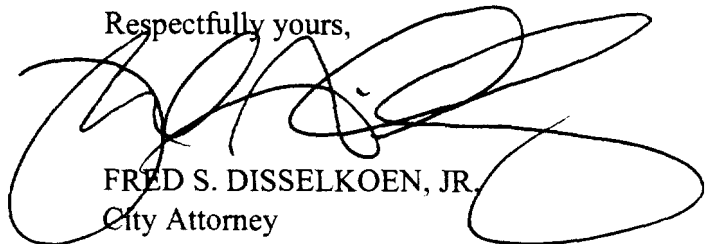
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We ask that these comments be included in the record on these rulemakings and given due consideration in arriving at a final decision in these matters.

Thank you.

Respectfully yours,

A large, stylized handwritten signature in black ink, consisting of several loops and flourishes, positioned above the printed name.

FRED S. DISSELKOEN, JR.  
City Attorney

FSD\mpl

c: Mr. Blair Levin, Chief of Staff  
City Commission  
Eugene Miller, City Manager  
Veronica Patterson, City Clerk  
Clay Ervin, AICP, Planning Director